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Before the
Federal Communications Commission
Washington, D.C. 20554

NOV - 8 2004

Federal Communications Commission
Office of Secretary

In the Matter of) MB Docket No. _____
) RM- _____
Amendment of Section 73.202(b)) RM- _____
(Table of Allotments))
FM Broadcast Stations)
)
(Rockmart and Aragon, Georgia; Chattanooga,)
and Lynchburg, Tennessee))

To: Secretary
(Attention: Assistant Chief, Audio Division, Media Bureau)

PETITION FOR RULE MAKING

Woman's World Broadcasting, Inc. ("Woman's"), by its attorneys, and pursuant to Section 1.420(i) of the Commission's Rules, hereby respectfully files this Petition for Rule Making to modify the Table of Allotments (47 C. F. R. §73.202 (b)) to change the allotment of FM Channel 296C2 from Rockmart, Georgia, to Aragon, Georgia, upgrade the channel to Channel 296C1 and modify the license of WTSH-FM, Rockmart (Facility ID No. 7043), to operate on Channel 296C1 at Aragon. In support whereof, the following is shown:

Background

1. WTSH-FM, Rockmart, Georgia, is licensed to Woman's. The deletion of Channel 296C2 from Rockmart and the upgrade and reallocation to Aragon, Georgia, as Channel 296C1, with a concurrent modification of the license of WTSH-FM to operate on Channel 296C1 at Aragon, is permissible under Section 1.420(i) of the Rules, which authorizes the Commission to modify the license or permit of an FM station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's present allotment.

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2. Two factors must be demonstrated in order to change a station's city of license in a rule making proceeding: (1) the channel changes must be mutually exclusive, and (2) the rule making must not deprive a community of an existing service representing its only local transmission service. The Commission stated that in making the determination of whether to amend the Table of Assignments it would "take into account the totality of the service improvements resulting from a proposed change in community of license in determining whether an allotment proposal should be approved." *See Modification of FM and TV Authorizations (New Community of License)*, 4 FCC Rcd 4870 [66 RR 2d 877] (1989). Woman's proposal is consistent with the rules and Commission policies, i.e., the channel changes are mutually exclusive, and as shown *infra*, the rule making will not deprive Rockmart of its only local transmission service.

Expression of Continuing Interest

3. If the Commission allots Channel 296C1 to Aragon, promptly following the effective date of the allotment, Woman's will file an application for a minor change construction permit to operate WTSH-FM at Aragon, and upon grant, will promptly construct and operate the facilities.

4. Attachment A is a Technical Statement, which is incorporated herein by reference, that provides the Commission with technical information about the proposed channel exchange at Rockmart and Aragon.

Rockmart, Georgia

5. According to the U.S. Census, Rockmart had a 2000 population of 3,870 persons. Rockmart has two commercial broadcast stations, WTSH-FM, licensed to Woman's and

WZOT(AM)¹, which is licensed to Triple J's Broadcasting, LLC. Thus, Rockmart will not be deprived of its only transmission service if the Commission allots Channel 296C1 to Aragon.

Aragon, Georgia

6. Aragon is listed in the U.S. Census as an incorporated city which had a 2000 population of 1,039. Aragon is located in Polk County, Georgia, which had a 2000 population 38,127. As set forth in the Technical Statement, the city of Aragon's municipal affairs are administered under a Mayor-Council form of government. The mayor and four City Council members set government policy and oversee the administrative functions as performed by ten municipal employees, including a city clerk and city attorney. Aragon has a police department with four full time officers, a fire department, and a parks and recreation department. The city has its own post office with zip code 30104. Aragon is home to seven churches, the Aragon cemetery, and a variety of local businesses. Therefore, Aragon possesses the requisite "social, economic and cultural components that are commonly associated with community status." *See, FM Table of Allotments (East Hemet, CA)*, 67 RR 2d 146, 147 (1989). WTSH-FM would bring first local service to Aragon, since Aragon currently does not have a local station.

7. There is no requirement to provide a showing pursuant to *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) and *RKO General*, 5 FCC Rcd 3222 (1990), that Aragon is independent of any urbanized area. According to the Technical Statement, from the reference coordinates at **North Longitude 34° 22' 02"**, **West Longitude 84° 58' 33"** the proposed 70 dBu contour of WTSH-FM would cover only 3.38 percent of the Atlanta, Georgia, urbanized area. Aragon is not located in an urbanized area or located in a county in the Atlanta Arbitron radio market. The

¹ 1220 kHz, 0.5 kW Day, 0.103 kW Night.

proposed 70 dBu contour does not cover more than 50% of the urbanized area, so there is also no requirement to provide a showing pursuant to *Headland, Alabama, and Chattahoochee, Georgia*, 10 FCC Rcd 10342 (1995) that stations licensed to urbanized areas should not be attributed to Aragon. See, *Rose Hill, Trenton, Aurora and Ocracoke, North Carolina*, DA 96-2062, released December 13, 1996. Aragon warrants a first local service preference.

Technical Considerations And Section 307(b) Analysis

8. In changing its community of license, WTSH-FM proposes to relocate its transmitter site. The allocation site meets all known constraints, except as described herein. The Technical Statement demonstrates that the 60 dBu contour of WTSH-FM at Rockmart covers a population of 762,448 persons. WTSH-FM operating at Aragon would cover 1,573,312 persons. There would be no loss of service and a gain in service to 750,824 persons. As noted above, since Rockmart will continue to enjoy service from WZOT, Woman's proposal will not deprive Rockmart of its only local transmission service. The Commission has made similar allotment changes where only a daytime AM station remained in a community. See *Johnstown and Altamont, New York*, 13 FCC Rcd 12463 (1998) [WIZR, Johnstown, operating with 1 kW day and 28 watts at night].

9. As shown in the attached Engineering Exhibit, Aragon would be entirely covered by a 70 dBu or better signal from WTSH-FM. Thus, modification of the license for WTSH-FM would be consistent with the Commission's city-grade contour coverage requirements.

10. Two additional changes to the table of allotments are requested herein. In order to allot Channel 296C1 to Aragon, it is necessary to substitute Channel 230A for vacant Channel 296A at Lynchburg, Tennessee. This can be done in compliance with all constraints since, effective August 9, 2004, the licensee of WRHP(FM), Channel 227C1, Tullahoma, Tennessee,

was ordered to relocate to New Market, Alabama, on Channel 227C2. See *Tullahoma, Tennessee, and New Market, Alabama*, DA 04-1736, released June 25, 2004.

11. In addition, Station WSKZ(FM), Channel 293C, Chattanooga, Tennessee, must be downgraded to Class C0 in order to accommodate WTSH-FM at Aragon as a Class C1 station. WSKZ(FM) operates with an antenna height of 329 meters, short of the 450 meters required to maintain full Class C status. A copy of this Petition is being served upon the licensee of WSKZ, Citadel Broadcasting Company.

12. The Commission's priorities for assigning FM allotments are set out in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). They are: (1) first aural service, (2) second aural service, (3) first local service, and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). Here, as noted *supra* first local service to Aragon is greatly preferred to retaining two local services to Rockmart. Thus, there would a preferential arrangement of allotments resulting from the allotment of Channel 296C1 to Aragon.

WHEREFORE, Woman's respectfully requests the Commission to amend Section 73.202(b) of the Commission's Rules, as follows:

Georgia

	<u>Present</u>	<u>Proposed</u>
Rockmart	296C2	--- ²
Aragon	---	296C1

² WZOT(AM) is to remain licensed to Rockmart.

Tennessee

	<u>Present</u>	<u>Proposed</u>
Lynchburg	296A	230A
Chattanooga	293C	293C0


Conclusion

Woman's requests the Commission to allot Channel 296C1 to Aragon, Georgia, and modify the license of WTSH-FM to operate on FM Channel 296C1 at Aragon. If the Commission so modifies the license of WTSH-FM, Woman's will timely file an application for minor change construction permit to operate WTSH-FM at Aragon, and upon grant thereof, Woman's will construct the new facilities and operate them.

Respectfully submitted,

**WOMAN'S WORLD
BROADCASTING, INC.**

By:


for Gary S. Smithwick
Its Attorney

SMITHWICK & BELENDIUK, P.C.

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November 8, 2004

ATTACHMENT A

WOMAN'S WORLD BROADCASTING, INC.

Rockmart, Georgia

TECHNICAL STATEMENT

In support of

Proposed rulemaking

Aragon, Georgia

November 2004

The following technical statement, and related exhibits, have been prepared for Woman's World Broadcasting, Inc. and are in support of a proposal to amend section 73.202 (b) of the Commission's rules to change the city of license of radio station WTSB from Rockmart to Aragon, Georgia, as that community's first service, and a change in domestic class from C2 to C1. This proposal requests the FM table of allotments be changed to reflect the following.

	<u>Rockmart, GA</u>	<u>Aragon, GA</u>	<u>Chattanooga, TN</u>	<u>Lynchburg, TN</u>
Present	296C2	---	293C	296A
Proposed	---	296C1	293C0	230A

Rockmart, Georgia will continue to receive service from AM radio station WZOT.

Spacing Concerns:

Exhibit 1 is a spacing study that shows the proposed C1 site. It is noted that from the proposed site this proposal is short spaced to station WSKZ, Channel 293C Chattanooga, Tennessee and the allocation of channel 296A at Lynchburg, Tennessee. **Exhibit 1A** shows the clear area once the short spacing's are addressed as follows:

Down Class of WSKZ:

Station WSKZ, licensed to Citadel Broadcasting Company, operates on channel 293C with a HAAT of 329 meters. This is far short of the minimum of 450 meters set forth by the Commission to maintain its full class C status; therefore, we propose to down class this facility from a class C to C0. A complete study of both WSKZ and this proposal indicated there were no alternate channels for WSKZ or this proposal to operate without the proposed down class.

Lynchburg, TN.

Channel 296A is an unused allocation to Lynchburg, Tennessee. We propose to delete channel 296A and allocate channel 230A at Lynchburg. Attached, as **exhibit 2**, is a spacing study of channel 230A at Lynchburg, Tennessee.

There is noted a short spacing to WHRP, Tullahoma, Tennessee, but on June 23, 2004, The commission adopted a report and order, DA 04-1736, in MB Docket no. 03-244, effect that modified CFR 73.202(b) to re-allot channel 227C1 from Tullahoma, Tennessee to New Market, Alabama and down class WHRP from class C1 to C2. Attached is a copy of the R&O released on June 25, 2004. **Exhibit 2A** clearly shows channel 230A can be allotted to Lynchburg to replace channel 296A once the WHRP move is complete. Also included with this exhibit is a 16.2 Km circle to represent the city grade contour from the proposed location of channel 230A.

City Grade Coverage of Aragon:

Offered as **exhibit 3**, is a visual plot showing the 70 dBu contour from the proposed site. This plot assumes a full C1 HAAT of 299 meters and an ERP of 100Kw. Offered as **exhibit 4**, is a line-of site study showing no terrain obstruction between the proposed site and the city of Aragon. **Exhibit 4A** is a close up view of the proposed contour and the proposed new city of license.

Offered as **exhibit 5**, is a plot showing the 60 dBu contour from the proposed site. The total population within this contour is 1,513,312 persons. The total population from the present licensed site is 762,448 persons. A net gain of 750,824 persons would be provided with this new service. **Exhibit 5A** is a visual plot showing no population loss as a result of this proposal.

Atlanta Urbanized Area:

Attached as **exhibit 6** is a U.S .Census Urbanized area outline map for the Atlanta urbanized area. This exhibit shows the proposed 70 dBu contour. A Lasico series 42P/C electronic polar planimeter was used to confirm what portion of the Atlanta urbanized area would fall inside the proposed contour. It was determined that 3.38 percent of the area would be effected. This is far short of the 50 percent necessary for a complete analysis; therefore, none is offered.

Aragon, Georgia:

Aragon is an incorporated city with a 2000 Census population of 1039. The Aragon City Clerk estimates the current population to be over 1200. A Mayor and four (4) member Council govern the City. Aragon has ten (10) fulltime employees including a City Clerk. Aragon has a Police Department with four (4) fulltime officers, a Fire Department, a Parks and Recreation Department and its own Post Office and zip code 30104. The City is home to seven (7) churches and the Aragon Cemetery. The City has a new City Hall, which cost over \$1.2 Million to build, along with a variety of local businesses. The City of Aragon was incorporated in 1970.

Conclusion:

Woman's World Broadcasting, Inc. requests the Commission amend section 73.202 (b) of the Commissions rules to reflect a change in the city of license of radio station WTSHEM from Rockmart to Aragon, Georgia and change the domestic class from C2 to C1. The above technical statement, and related exhibits. show that this proposal passes muster with all Commissions rules and therefore should be granted.

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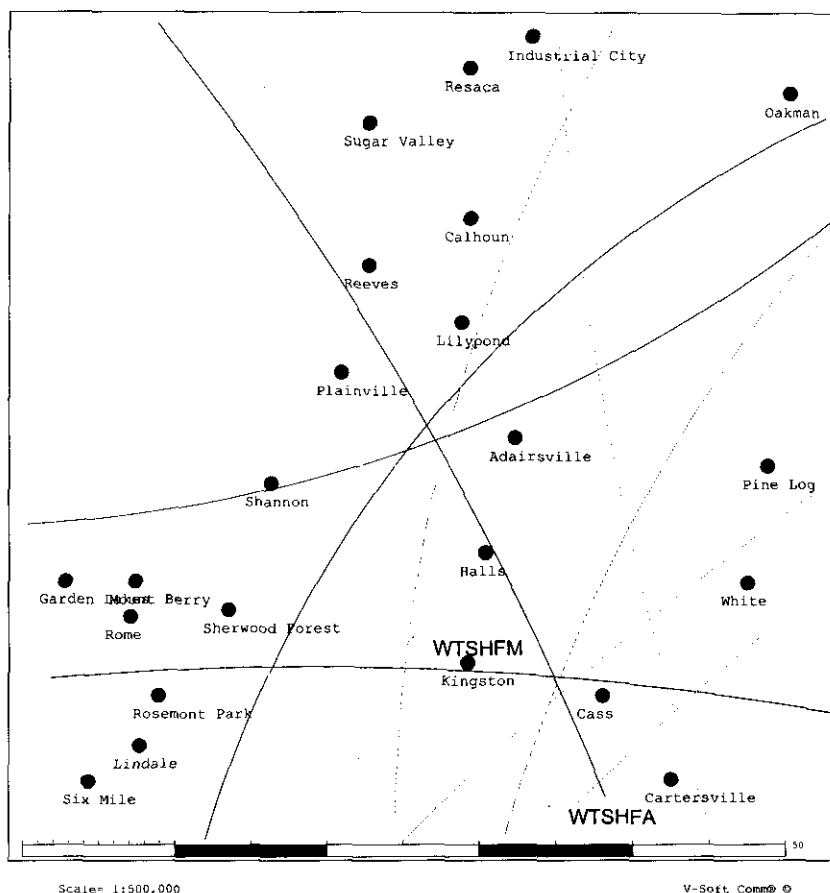
EXHIBIT - 1

FMCONT^(TM) LOCATE STUDY

Ch 296 C1
107.1 MHz

N. Lat. 34 22 02
W. Lng. 84 58 33

Dates:
Data:10-28-04
Job :11-04-04



Call	CH#	Type	Location		D-KM	Azi	FCC	Margin
WTSHF	296C2	LIC	Rockmart	GA	12.93	183.6	224.0	-211.07
WTSHFA	296C2	APP	Rockmart	GA	25.18	161.3	224.0	-198.82
WTSHFC	296C2	CP -Z	Rockmart	GA	45.41	170.1	224.0	-178.59
AL296	296A	VAC	Lynchburg	TN	163.20	309.0	200.0	-36.80
WSKZ	293C0	LIC	Chattanooga	TN	93.54	340.6	94.0	-0.46
WBPT.C	295C0	CP	Homewood	AL	195.59	240.4	196.0	-0.41
WBPT	295C0	LIC	Birmingham	AL	195.59	240.4	196.0	-0.41
WJZZFM	298C3	LIC	Roswell	GA	75.60	129.7	76.0	-0.40
WJZZFC	298C3	CP	Roswell	GA	75.60	129.7	76.0	-0.40
WYAY	294C*	LIC	Gainesville	GA	106.32	104.4	105.0	1.32
RDEL	297C	DEL	Columbus	GA	210.95	182.0	209.0	1.95
WJZZFM	297C*	LIC	Anderson	SC	220.77	79.6	209.0	11.77
WYAY.A	294C	APP N	Gainesville	GA	119.46	117.4	105.0	14.46
WCGQ	297C0	LIC	Columbus	GA	210.95	182.0	196.0	14.95
RADD	297C0	ADD	Columbus	GA	210.95	182.0	196.0	14.95
WFXM.C	296A	CP	Gordon	GA	218.33	140.1	200.0	18.33
WKZP	297A	LIC	Spencer	TN	152.38	341.1	133.0	19.38
WFXM	296A	LIC	Gordon	GA	224.06	137.9	200.0	24.06
WQLTFA	297C1	APP-Z	Florence	AL	213.43	277.2	177.0	36.43
WKXDFM	295C2	LIC-Z	Monterey	TN	196.03	352.9	158.0	38.03
RDEL	243C	DEL	Chattanooga	TN	93.50	340.6	41.0	52.50

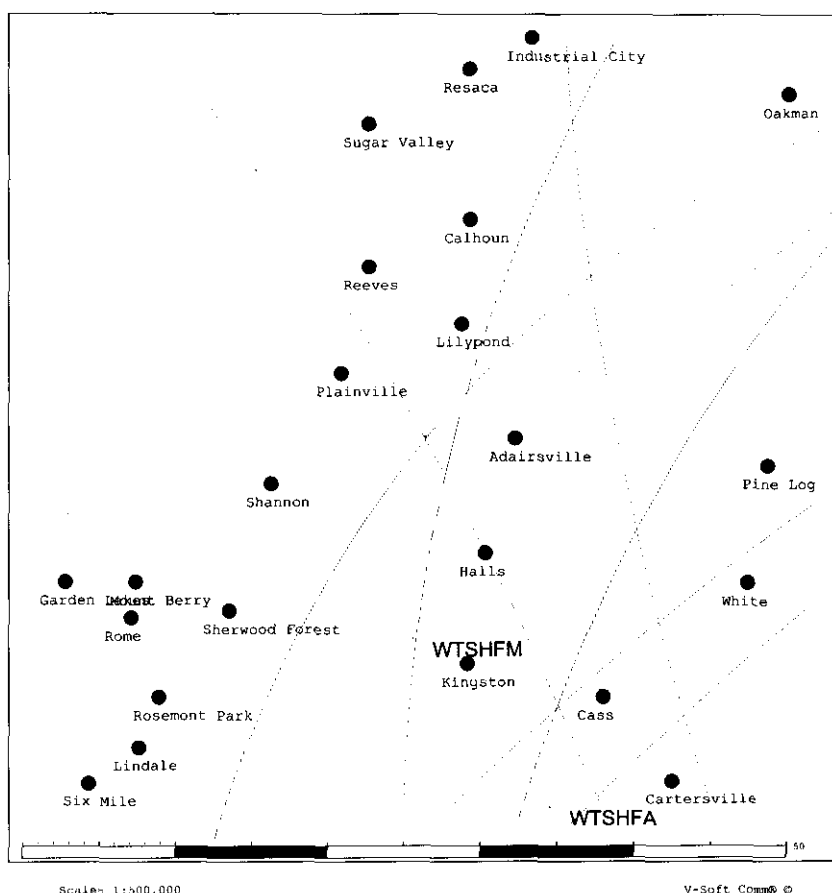
EXHIBIT 1A

FMCONT^(TM) LOCATE STUDY

Ch 296 C1
107.1 MHz

N. Lat. 34 22 02
W. Lng. 84 58 33

Dates:
Data:10-28-04
Job :11-04-04



Call	CH#	Type	Location		D-KM	Azi	FCC	Margin
WTSHF	296C2	LIC	Rockmart	GA	12.93	183.6	223.5	-210.57
WTSHFA	296C2	APP	Rockmart	GA	25.18	161.3	223.5	-198.32
WTSHFC	296C2	CP -Z	Rockmart	GA	45.41	170.1	223.5	-178.09
WSKZ	293C0	LIC	Chattanooga	TN	93.54	340.6	93.5	0.04
WBPT.C	295C0	CP	Homewood	AL	195.59	240.4	195.5	0.09
WBPT	295C0	LIC	Birmingham	AL	195.59	240.4	195.5	0.09
WJZZFC	298C3	CP	Roswell	GA	75.60	129.7	75.5	0.10
WJZZFM	298C3	LIC	Roswell	GA	75.60	129.7	75.5	0.10
WYAY	294C*	LIC	Gainesville	GA	106.32	104.4	104.5	1.82
RDEL	297C	DEL	Columbus	GA	210.95	182.0	208.5	2.45
WJMZFM	297C*	LIC	Anderson	SC	220.77	79.6	208.5	12.27
WYAY.A	294C	APP N	Gainesville	GA	119.46	117.4	104.5	14.96
RADD	297C0	ADD	Columbus	GA	210.95	182.0	195.5	15.45
WCGQ	297C0	LIC	Columbus	GA	210.95	182.0	195.5	15.45
WFXM.C	296A	CP	Gordon	GA	218.33	140.1	199.5	18.83
WKZP	297A	LIC	Spencer	TN	152.38	341.1	132.5	19.88
WFXM	296A	LIC	Gordon	GA	224.06	137.9	199.5	24.56
WQLTFA	297C1	APP-Z	Florence	AL	213.43	277.2	176.5	36.93
WKXDFM	295C2	LIC-Z	Monterey	TN	196.03	352.9	157.5	38.53
WDODFC	243C*	CP -D	Chattanooga	TN	93.50	340.6	40.5	53.00
RDEL	243C	DEL	Chattanooga	TN	93.50	340.6	40.5	53.00

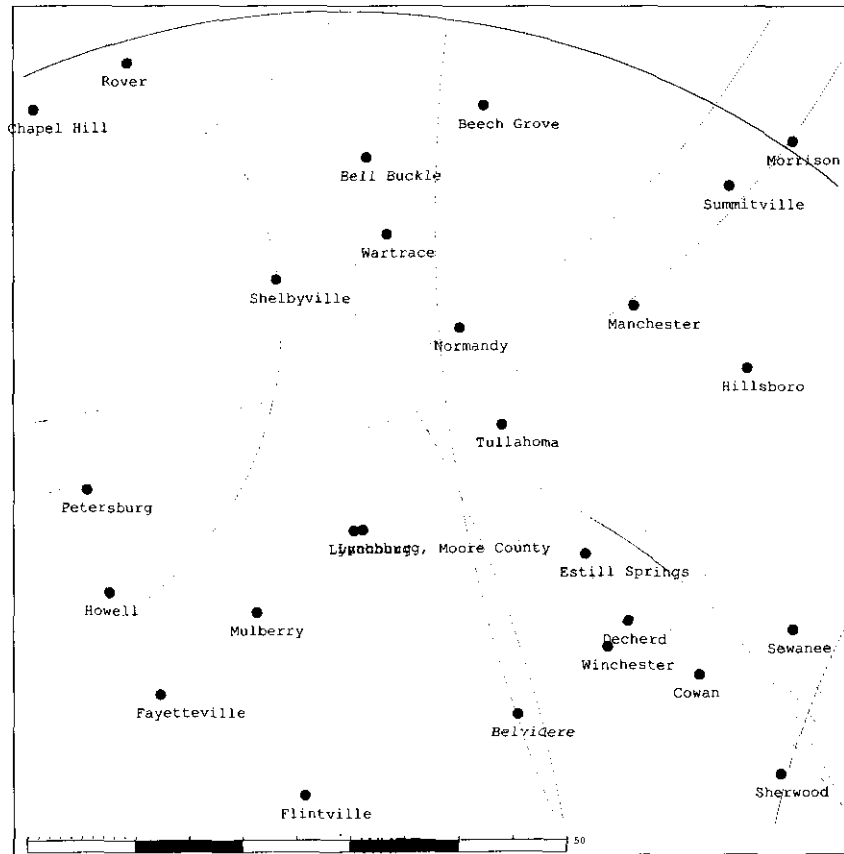
EXHIBIT - 2
CHANNEL 230 AT LYNCHBURG, TN.

FMCONT^(TM) LOCATE STUDY

Ch 230 A
93.9 MHz

N. Lat. 35 21 58
W. Lng. 86 17 18

Dates:
Data:10-28-04
Job :11-03-04



Scale= 1:707,031

V-Sort Coma® ©

Call	CH#	Type	Location		D-KM	Azi	FCC	Margin
WHRP	227C1	LIC	Tullahoma	TN	37.74	192.9	75.0	-37.26
AL231	231A	RSV	Gurley	AL	72.11	196.1	72.0	0.11
WYTK	230A	LIC N	Rogersville	AL	115.23	241.3	115.0	0.23
WXQW	231A	LIC-Z	Meridianville	AL	73.17	197.7	72.0	1.17
WAYA	230C3	LIC N	Spring City	TN	143.78	82.2	142.0	1.78
WFFH	231A	LIC	Smyrna	TN	73.95	340.9	72.0	1.95
AL227	227C2	RSV	New Market	AL	57.18	192.8	55.0	2.18
WXQW.A	231A	APP	Gurley	AL	78.84	195.2	72.0	6.84
WXQW.A	231A	APP	Gurley	AL	78.84	195.2	72.0	6.84
WFFH.C	231A	CP	Smyrna	TN	79.22	336.6	72.0	7.22
WJUMFM	232A	LIC	Lewisburg	TN	45.85	282.0	31.0	14.85
WBXE	229C3	LIC N	Baxter	TN	120.54	40.8	89.0	31.54
WFFI	229A	LIC	Kingston Springs	TN	106.13	323.9	72.0	34.13
WSGM	284A	LIC-D	Coalmont	TN	51.33	100.7	10.0	41.33
WMPZ	229A	LIC N	Ringgold	GA	114.35	116.9	72.0	42.35
WDJCFM	229C*	LIC	Birmingham	AL	220.12	194.4	165.0	55.12

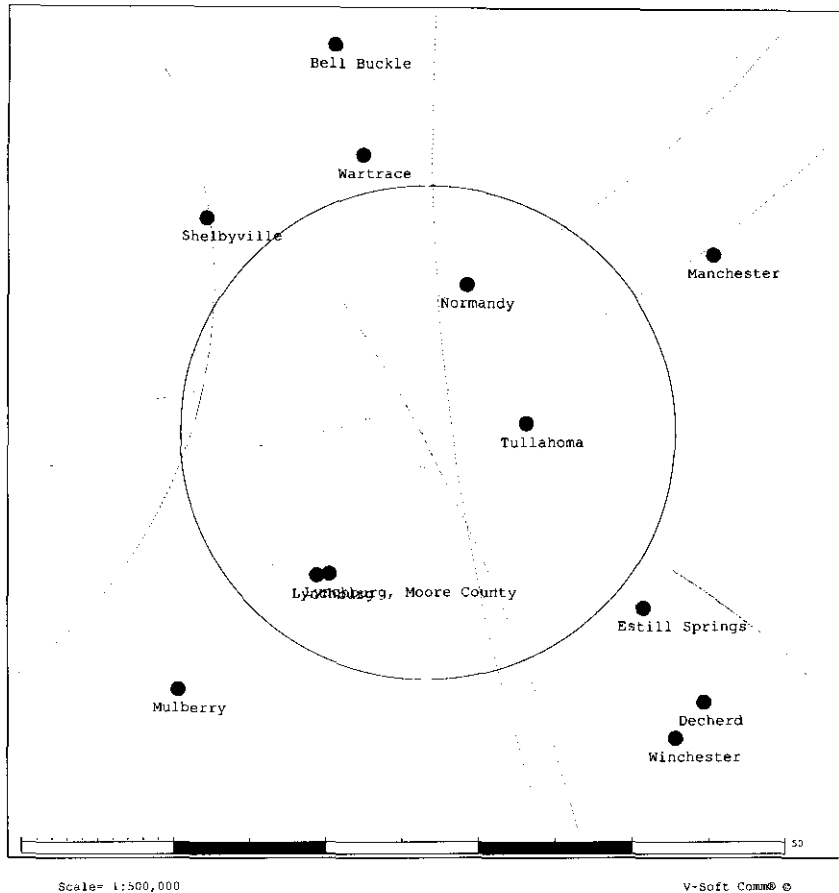
EXHIBIT - 2A
CHANNEL 230 AT LYNCHBURG, TN.

FMCONT^(TM) LOCATE STUDY

Ch 230 A
93.9 MHz

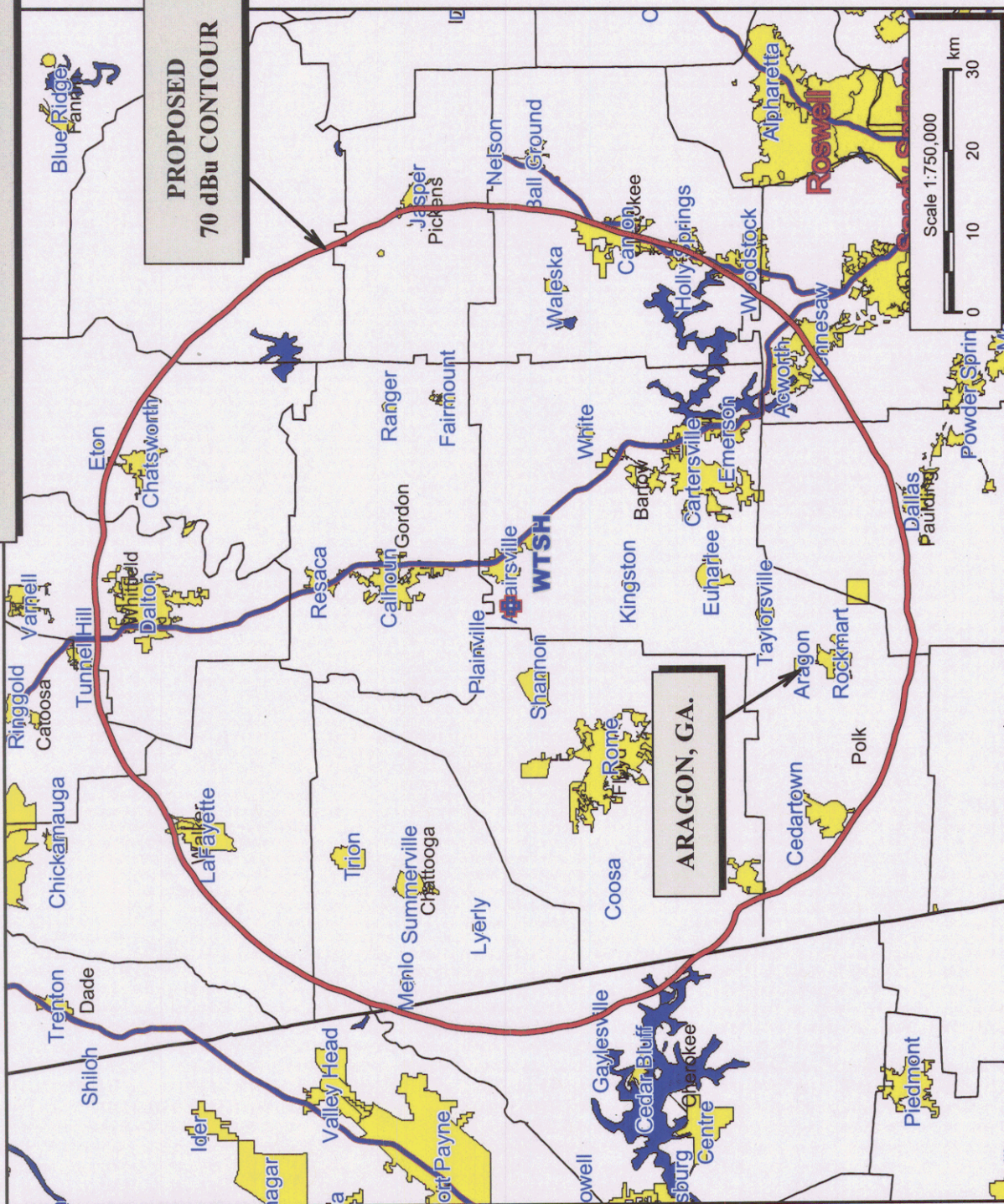
N. Lat. 35 21 58
W. Lng. 86 17 18

Dates:
Data:10-28-04
Job :11-03-04



Call	CH#	Type	Location		D-KM	Azi	FCC	Margin
AL231	231A	RSV	Gurley	AL	72.11	196.1	72.0	0.11
WYTK	230A	LIC N	Rogersville	AL	115.23	241.3	115.0	0.23
WXQW	231A	LIC-Z	Meridianville	AL	73.17	197.7	72.0	1.17
WAYA	230C3	LIC N	Spring City	TN	143.78	82.2	142.0	1.78
WFFH	231A	LIC	Smyrna	TN	73.95	340.9	72.0	1.95
AL227	227C2	RSV	New Market	AL	57.18	192.8	55.0	2.18
WXQW.A	231A	APP	Gurley	AL	78.84	195.2	72.0	6.84
WXQW.A	231A	APP	Gurley	AL	78.84	195.2	72.0	6.84
WFFH.C	231A	CP	Smyrna	TN	79.22	336.6	72.0	7.22
WJJMFM	232A	LIC	Lewisburg	TN	45.85	282.0	31.0	14.85
WBXE	229C3	LIC N	Baxter	TN	120.54	40.8	89.0	31.54
WFFI	229A	LIC	Kingston Springs	TN	106.13	323.9	72.0	34.13
WSGM	284A	LIC-D	Coalmont	TN	51.33	100.7	10.0	41.33
WMPZ	229A	LIC N	Ringgold	GA	114.35	116.9	72.0	42.35
WDJCFM	229C*	LIC	Birmingham	AL	220.12	194.4	165.0	55.12

EME COMMUNICATIONS - MOULTRIE, GA.



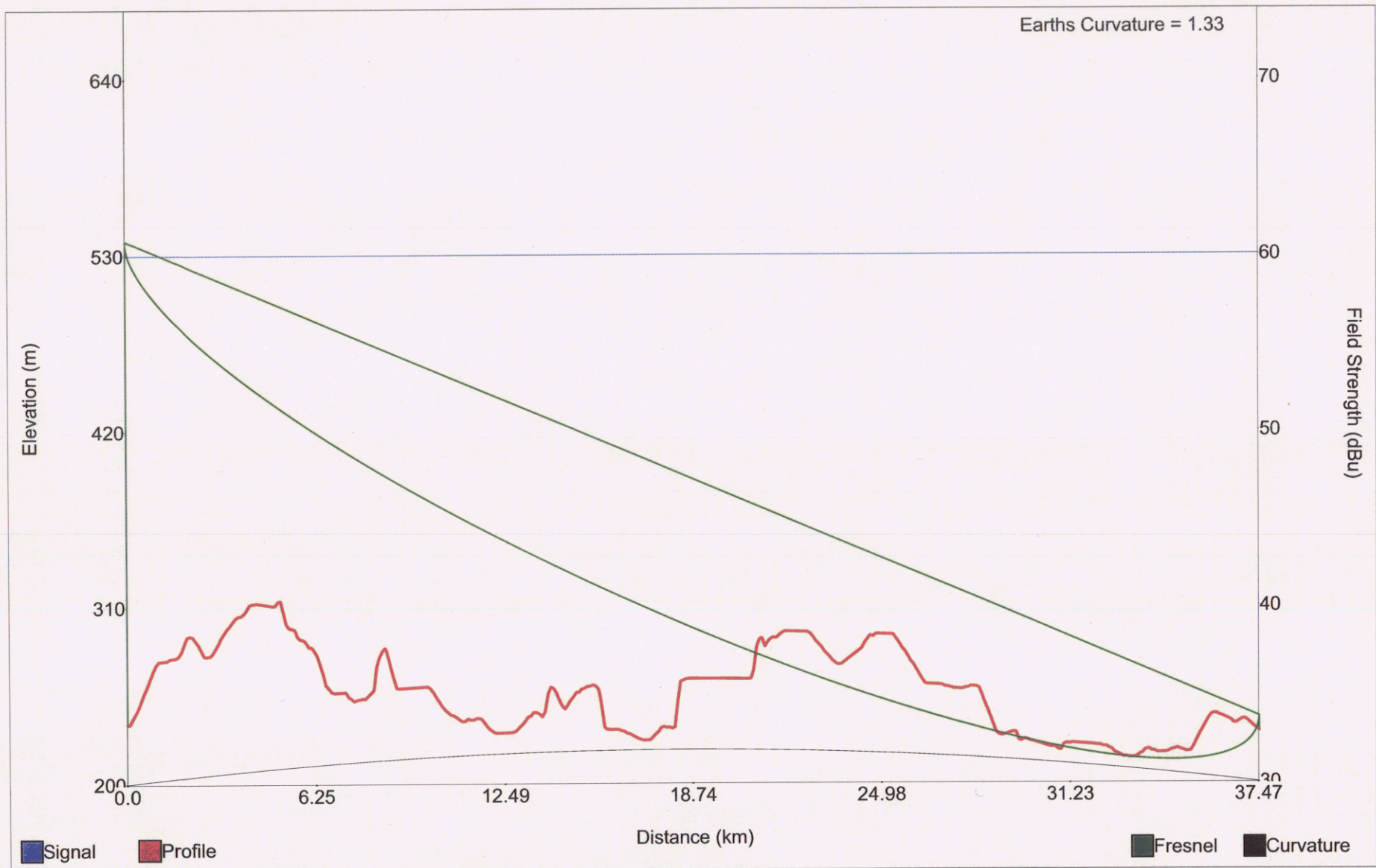
**PROPOSED
70 dBu CONTOUR**

ARAGON, GA.

WTSH
PROPOSED C1
Latitude: 34-22-02 N
Longitude: 084-58-33 W
ERP: 100.00 kW
Channel: 296
Frequency: 107.1 MHz
AMSL Height: 542.69 m
Elevation: 240.71 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: None

EXHIBIT 3

EXHIBIT 4 - LINE-OF-SITE STUDY



Starting Latitude: 34-22-02 N
Starting Longitude: 084-58-33 W

End Latitude: 34-02-05.55 N
End Longitude: 085-02-55.34 W

Distance: 37.47 km
Bearing: 190.35 deg

Transmitter Height (AG) = 302.0 m
Receiver Height (AG) = 9.1 m

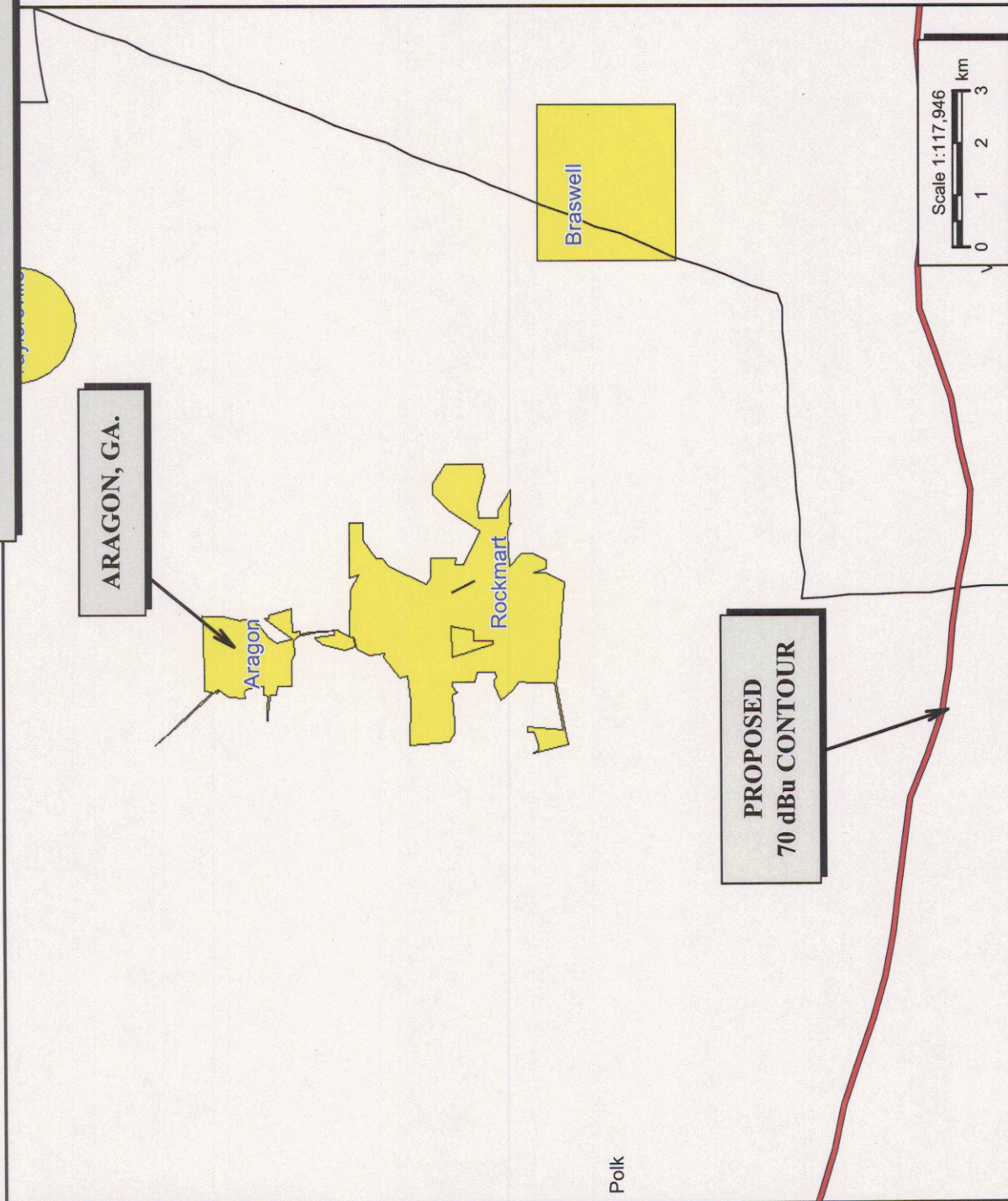
Transmitter Elevation = 237.0 m
Receiver Elevation = 231.6 m

Frequency = 107.1 MHz
Fresnel Zone: 0.6

EME COMMUNICATIONS - MOULTRIE, GA.

WTSH
PROPOSED C1
Latitude: 34-22-02 N
Longitude: 084-58-33 W
ERP: 100.00 kW
Channel: 296
Frequency: 107.1 MHz
AMSL Height: 542.69 m
Elevation: 240.71 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: None

EXHIBIT 4A



WTSH
PROPOSED C1
Latitude: 34-22-02 N
Longitude: 084-58-33 W
ERP: 100.00 kW
Channel: 296
Frequency: 107.1 MHz
AMSL Height: 542.69 m
Elevation: 240.71 m
Horiz. Pattern: Omni
Vert. Pattern: No
Prop Model: None

EXHIBIT 5


EME COMMUNICATIONS - MOULTRIE, GA.

PROPOSED 60 dBU CONTOUR

Total Population Within Contour: 1,513,312

WTSH

Scale 1:1,006,009

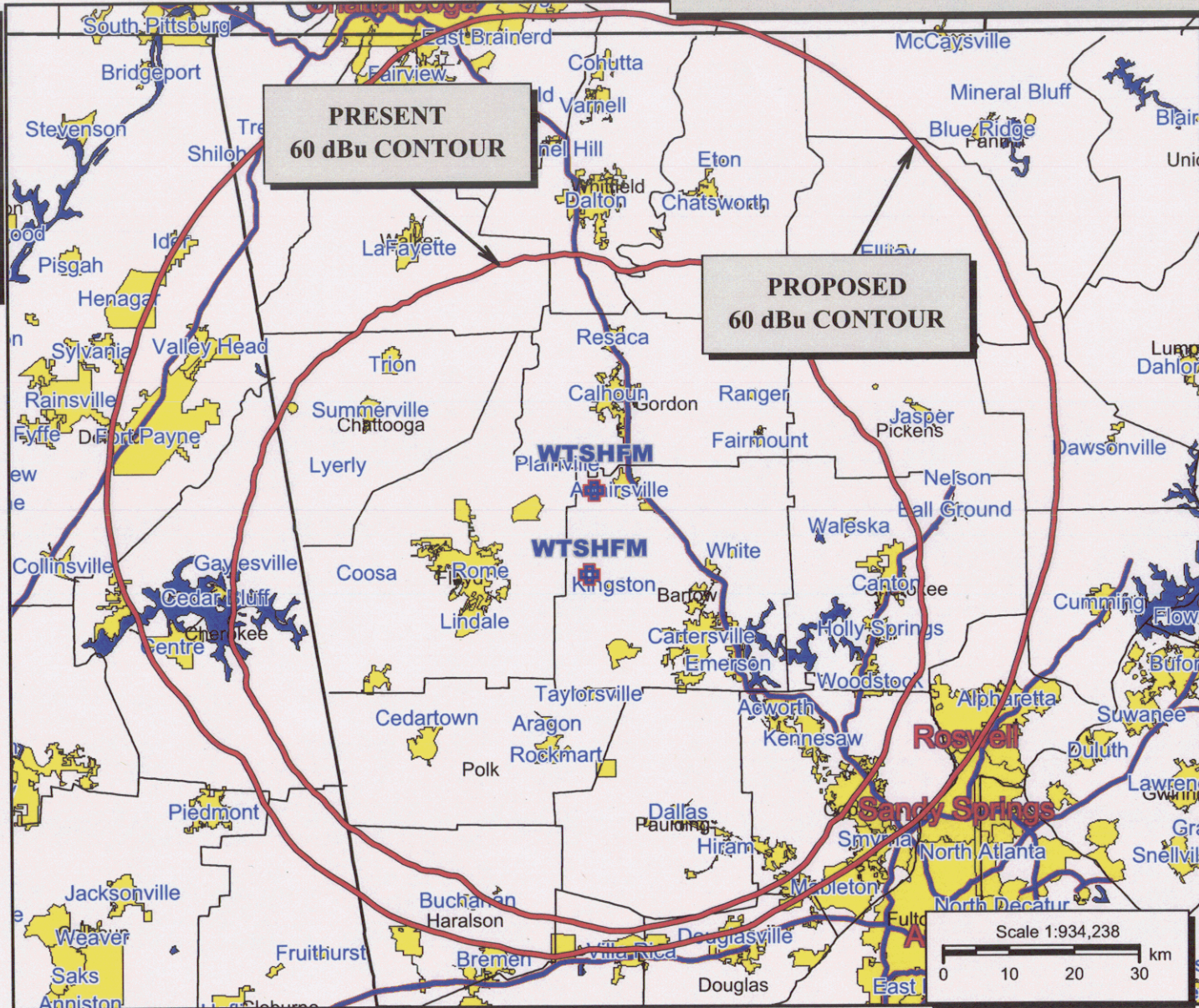


0 10 20 30 km

EME COMMUNICATIONS - MOULTRIE, GA.

WTSHF
PROPOSED C1
 Latitude: 34-22-02 N
 Longitude: 084-58-33 W
 ERP: 100.00 kW
 Channel: 296
 Frequency: 107.1 MHz
 AMSL Height: 539.03 m
 Elevation: 237.05 m
 Horiz. Pattern: Omni
 Vert. Pattern: No
 Prop Model: None

EXHIBIT 5A



URBANIZED AREA OUTLINE MAP (CENSUS 2000)
Atlanta, GA

70 dBu CONTOUR



LEGEND

URBANIZED AREAS

Atlanta, GA (2000)

DeKalb County (1345)

Fulton County (1346)

Clayton County (1347)

Spalding County (1348)

Cherokee County (1349)

Conley County (1350)

Rockdale County (1351)

Walton County (1352)

Wilkes County (1353)

Wheeler County (1354)

Wayne County (1355)

Wilcox County (1356)

Worth County (1357)

Yamacraw County (1358)

Yamacraw County (1359)

Yamacraw County (1360)

Yamacraw County (1361)

Yamacraw County (1362)

Yamacraw County (1363)

Yamacraw County (1364)

Yamacraw County (1365)

Yamacraw County (1366)

Yamacraw County (1367)

Yamacraw County (1368)

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Federal Communications Commission

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Tullahoma, Tennessee, and
New Market, Alabama)

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MB Docket No. 03-244
RM-10825

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 23, 2004

Released: June 25, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division issued a Notice of Proposed Rulemaking in response to a Petition for Rule Making filed by Tennessee Valley Radio, Inc. ("Petitioner"), licensee of FM Station WHRP, Tullahoma, Tennessee.¹ The Notice proposes to downgrade Channel 227C1 to Channel 227C2 at Tullahoma, Tennessee, to change the community of license from Tullahoma, Tennessee, to New Market, Alabama, and to modify the license of FM Station WHRP accordingly. Petitioner's request was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.² Petitioner filed comments supporting the changes proposed in the Notice. No other comments were received in response to the Notice.

2. In determining whether to approve a change of community, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

3. Adoption of the proposal advanced in this proceeding will not result in any white or gray areas (priorities one and two under the Commission's allotment priorities). Retention of Channel 227C1 at Tullahoma would satisfy only the fourth priority, other public interest matters.⁴ Petitioner's proposal

¹ *Tullahoma, New Market, and Homosassa Springs, Florida*, 18 FCC Rcd 783 (MB 2003) ("Notice"). FM Station WHRP was FM Station WUSX at the time that the petition for rulemaking was filed. This order references the new call letters of the station.

² See *Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License")*, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

³ 90 FCC 2d 88 (1982), recon. denied, 56 RR 2d 448 (1983).

⁴ Tullahoma also is served by Stations WAUT(FM)(Channel 203A), WTML(FM)(Channel 218A), and

to allot Channel 227C2 at New Market would provide New Market with a first local service, thus satisfying the third allotment priority.

4. Although New Market is not located within an urbanized area, the specified transmitter site for the proposed allotment would allow FM Station WHP to place a 70 dBu signal over 82.4 percent of the Huntsville, Alabama, Urbanized Area. In such circumstances, we do not blindly apply a first local service preference; rather, we determine whether to apply a local service preference after evaluating the independence of the proposed community, based upon existing precedent.⁵ The situation presented here, however, differs from one in which a licensee uses the first local service preference as a pretext to enter an urban market, because WHP(FM) already provides service to 90 percent of the Huntsville, Alabama, Urbanized Area from its current community of license, Tullahoma, Tennessee. In such instances, we have declined to apply *Huntington* and *Tuck*.⁶ Even applying the *Tuck* criteria,⁷ New Market is sufficiently independent of Huntsville to qualify for a first local service preference, for the reasons discussed below.

5. In *Tuck*, the Commission specified the following three factors for evaluating a community's independence: (1) signal population coverage, i.e., the degree to which the proposed station will provide service to both the suburban community and the larger metropolis; (2) the size and proximity of the suburban community relative to the metropolis; and (3) the interdependence of the suburban community with the metropolis. Of these three factors, the most significant is the third.⁸

6. The proposed allotment changes would decrease FM Station WHP's signal coverage of the Huntsville Urbanized Area. From its current community of license, WHP provides service to 90 percent of the population of the Huntsville Urbanized Area, and that coverage would decrease to 82.4 percent if the proposed allotment changes are adopted. As to the relative sizes of New Market and Huntsville, New Market's population of 1,864 persons represents approximately 1.2 percent of the population of Huntsville (158,216). New Market is located 28.7 kilometers from Huntsville. As Petitioner points out in its petition for rulemaking, the Commission has granted change of community requests in cases

WJIG(AM)(740 kHz).

⁵ See, e.g., *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C.Cir. 1951) ("*Huntington*"); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*").

⁶ *Long Beach and East Long Angeles, California*, 10 FCC Rcd 2864, 2869 (M.M.Bur. 1995) ("first local service preference is not being used as a basis to enter the market"). See also *Boulder and Lafayette, Colorado*, 12 FCC Rcd 583 (M.M.Bur. 1997).

⁷ See *Ardmore, Brilliant, Brookwood, Badsden, Hoover, Moundville, New Hope, Pleasant Grove, Russellville, Scottsboro, Troy, Tuscaloosa, and Winfield, Alabama, Okolona and Vardaman, Mississippi, and Linden, McMinnville, Pulaski, and Walden, Tennessee*, 17 FCC Rcd 20,536 (MB 2002).

⁸ *Tuck*, *supra*. See also *Eatonton and Sandy Springs, Georgia, and Anniston and Lineville, Alabama*, 6 FCC Rcd 6,580 ¶23 (M.M.Bur. 1991), *app. for rev. dismissed*, 12 FCC Rcd 8392 (M.M.Bur. 1997).

involving similar size and distance characteristics.⁹ Moreover, FM stations have been allotted to numerous communities the size of New Market or smaller, and change of community proposals have been approved in instances where the new community was much closer to the central city than is the case in this proceeding.¹⁰ Neither the extent of signal coverage, nor the relative size or proximity of New Market and Huntsville, precludes a finding that New Market is an independent community for allotment purposes.

7. Turning to the most important consideration, the interdependence of the proposed community with the primary city in the urbanized area, we find that Petitioner has established that New Market is an independent community, rather than dependent upon Huntsville for its existence. New Market has its own ZIP code (35761), its own health facilities, its own fire department, and its own school system, consisting of two elementary schools and one high school. There are 15 churches and numerous commercial establishments in New Market, many of which identify themselves by incorporating "New Market" in their names. The Madison County Record, the newspaper serving New Market, is a local media outlet that provides New Market with a distinct advertising market that is independent of Huntsville. Finally, New Market, incorporated in 1837, is perceived by its residents and leaders as separate from Huntsville. For all of the foregoing reasons, we conclude that New Market is an independent community, deserving its own local broadcast service.

8. Because New Market is an independent community, the requested change of community would satisfy priority three of the Commission's allotment priorities, whereas retention of Channel 227C1 at Tullahoma would satisfy only priority four. We therefore conclude that the public interest would be served by downgrading Channel 227C1 to Channel 227C2 and reallocating Channel 227C2 at New Market, Alabama. Channel 227C2 can be allotted to New Market in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 5.2 kilometers (3.2 miles) south of New Market at coordinates 34-51-48 NL and 86-25-38 WL.

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), 0.283, and 1.420(i) of the Commission's Rules, IT IS ORDERED, That effective August 9, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED as follows:

<u>Community</u>	<u>Channel Number</u>
New Market, Alabama	227C2

⁹ See *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (M.M.Bur. 1996) (Newcastle had population equal to 0.9 percent of Oklahoma City), and cases cited therein; see also *Old Fort, Fletcher, and Asheville, North Carolina; Surgoinville, Tennessee, and Augusta, Georgia*, 18 FCC Rcd 12181 (MB 2003) (Fletcher located 17 kilometers from Asheville).

¹⁰ See, e.g., *Mullins and Briarcliffe Acres, South Carolina*, 14 FCC Rcd 10516 (M.M.Bur. 1999) (new community of allotment four miles from the central city of the urbanized area).

Tullahoma, Tennessee

10. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Tennessee Valley Radio, Inc., for FM Station WHRP, IS MODIFIED to specify operation on Channel 227C2 at New Market, Alabama, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (3)(l), any party seeking a change in community of license of a TV or FM allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Tennessee Valley Radio, Inc., licensee of FM Station WHRP, is required to submit a rule making fee in addition to the fee required for the applications to effectuate the changes specified above.

12. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this Order to the following:

Mark N. Lipp
J. Thomas Nolan
Vinson & Elkins L.L.P.
1455 Pennsylvania Avenue, N.W.
Suite 600
Washington, D.C. 20004-1008
(Counsel for Tennessee Valley Radio, Inc.)

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Deborah Dupont, Media Bureau, (202) 418-7072.

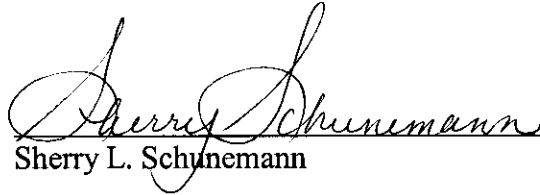
FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, do hereby certify that a copy of the foregoing "Petition for Rule Making was mailed by First Class U.S. Mail, postage prepaid, this 8th day of November, 2004, to the following:

Citadel Broadcasting Company
7201 W. Lake Mead Boulevard
Suite 400
Las Vegas, Nevada 89128
(Licensee of WSKZ)


Sherry L. Schunemann